

ESTTA Tracking number: **ESTTA596780**

Filing date: **04/04/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
Correspondence Address	CARLA CALCAGNO CALCAGNO LAW PLLC 1250 24TH ST NW , SUITE 300 WASHINGTON, DC 20037 UNITED STATES Carla.calcagno@calcagnolaw.com, cccalcagno@gmail.com, trademarks@canopyparalegal.com
Submission	Other Motions/Papers
Filer's Name	Carla C. Calcagno
Filer's e-mail	cccalcagno@gmail.com,trademarks@canopyparalegal.com
Signature	/Carla C. Calcagno/
Date	04/04/2014
Attachments	Petitioner's Reply in Further Support of Motion for Unilateral Extension.pdf(52151 bytes) Exhibit A to Petitioner's Reply in Support of Motion for Extension.pdf(2129760 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LEGEND PICTURES, LLC,)	
)	
Petitioner)	
)	
v.)	Cancellation No. 92056168
)	
QUENTIN DAVIS,)	
)	
Defendant)	

**PETITIONER’S REPLY IN FURTHER SUPPORT OF MOTION FOR UNILATERAL
EXTENSION**

Petitioner files this brief response to Davis’ Opposition to the Motion for Extension.

The sole issue before the Board is whether to extend discovery solely for Petitioner’s benefit. Petitioner respectfully submits that rather than refuting it, Davis’ response fails to identify a single reason Petitioner’s Motion should not be granted.

In this regard it is undisputed that (1): Petitioner has shown good cause for an extension of the discovery period; (2) Davis has failed to show excusable neglect justifying any reopening of the discovery period for his benefit; and (3) as throughout this case, by falsely accusing others of misconduct, Davis attempts to divert the board’s attention from his obstruction of discovery in this case.

ARGUMENT

I. PETITIONER HAS SHOWN GOOD CAUSE FOR AN EXTENSION OF THE DISCOVERY PERIOD

Davis has unjustifiably deprived Petitioner of responses to discovery or follow-up. As set forth in more detail in its motion, Petitioner has diligently served and cooperated in discovery. Petitioner served its first set of discovery requests early in the discovery period. Davis objected to all the requests and refused to answer any of them. As set forth in its opening brief, Petitioner timely contacted Davis about his invalid objections to discovery, attempted to cooperate, and timely moved to compel.

The Board granted the Motion to Compel, Davis refused to comply, and instead, filed a baseless Petition to the Director seeking to avoid the Board Order.

On January 7, 2013, the Board *again* ordered Davis to comply with Petitioner's discovery, requiring Davis to:

- answer Petitioner's discovery requests , including answering many without objection,
- produce the requested documents; and
- produce a privileged document log

The Board expressly ordered Davis to comply within 15 days of the Board's order – that is by January 22, 2013.

Davis again failed completely to comply with the Board order. Not only did he serve his written responses to Petitioner's interrogatories late¹ he: (1) failed to produce any responses to Petitioner's production requests and any documents until February 19, 2014, many weeks after

¹ That January 20, 2014 was a national holiday has no impact on the January 22, 2014 date these written responses were due.

the date the Board ordered²; (2) failed to produce a privileged document log³ and (3) continued to object to discovery, even though ordered not to object by the Board.

Davis has offered no valid reason for failing to comply with the Board's order. More importantly, whatever reasons Davis will allege for continuing to defy the Board's orders, these reasons are irrelevant to this Motion – whose sole issue is whether Petitioner is entitled to a unilateral extension of discovery.

It is well-settled that by failing to respond to discovery, thereby depriving the propounding party of follow-up, a party justifies an extension of the discovery period solely for the propounding party. Here, Davis' failure to cooperate in discovery not only has deprived Petitioner of its right to follow up – Petitioner has failed to receive any meaningful answers to even its initial round of discovery requests. Without such answers, Petitioner cannot go to trial. The Board must extend discovery for Petitioner's benefit should this case not be decided summarily in Petitioner's favor.

II. DAVIS HAS FAILED TO SHOW GOOD CAUSE LET ALONE ANY EXCUSABLE NEGLECT JUSTIFYING A REOPENING OF THE DISCOVERY PERIOD FOR HIS BENEFIT.

A. Davis Has Failed To Show Excusable Neglect For Failing To Timely Seek A Reopening Of The Discovery Period

² The documents produced were sparse to say the least, and Petitioner will address Davis' comments as to the nature of such documents in other motions as this is not material here. The point is that no documents whatsoever were produced until well after the date required by the Board thereby depriving Petitioner of a meaningful chance to conduct discovery – and Davis cannot dispute this fact.

³ Davis has no explanation whatsoever for failing to comply with the Board order to produce a privileged document log. In this regard, in this case, the privileged document log is critical as in his answers, Davis claims the attorney client and work product privilege even though throughout this case, he asks for the deference of the Board, claiming he is "pro se." Davis also has refused to answer discovery requests asking for the name of the counsel on whom these claims of privilege are made. Without the privileged document log, Petitioner cannot determine if these claims have any validity or are simply intended to further obstruct discovery.

Discovery closed on March 10, 2014.⁴ Davis failed to move for an extension of the discovery period before that date.

Petitioner continues to maintain that Davis conceded the issue by failing to oppose Petitioner's earlier motion for a unilateral extension of discovery. However, even *assuming arguendo* this concession did not exist, the law now bars any further extension of the discovery period for Davis' benefit.

As discovery is now closed, the Board may not extend his discovery period unless Davis shows "excusable neglect." See, Fed. R. Civ. P. 6(b)(1)(b).

Davis has not shown excusable neglect. Davis has failed to cite a single reason for failing to seek an extension of the discovery period, or for failing to serve additional discovery, before it closed. Indeed, one searches Davis' brief in vain for any justification to reopen discovery for his benefit.

In fact, the undisputed record reflects Davis is not entitled to an extension of the discovery period. Davis has obstructed discovery. The Board twice has ordered Davis to comply with discovery. Further, and despite this behavior, the Board twice extended the discovery period for Davis' benefit. Each time the Board extended the discovery period, Davis took no action in furtherance of discovery. Instead, he used the extended period to file baseless motions and to further obstruct discovery by failing to comply with Board orders.

III. Davis's Belated, Untimely, and Irrelevant Attacks On Petitioner Are Simply An After The Fact Litigation Position Attempted To Deter The Board From The Facts on This Motion.

⁴ As the last date of the discovery period was a Saturday, March 8, 2014, the last date for discovery was extended to Monday, March 10, 2014.

Throughout this case, by falsely accusing others of misconduct, Davis attempts to divert the Board's attention from his obstruction of discovery.

While many of the alleged "facts" set forth in Davis response are completely unrelated to the issue of whether Petitioner is entitled to a unilateral extension of the discovery period, Petitioner cannot permit the record to go unrefuted. Therefore, Petitioner will respond in summary fashion to the points made in Davis' motion:

- As May 27, 2013, the last date for taking action, was a national holiday, pursuant to Trademark Rule 1.8, Petitioner's responses to Davis' only discovery requests were due on May 28, 2013;
- Davis received Petitioner's written responses to discovery on May 28, 2013, the date they were due;
- These responses were utterly valid. While some objections were served, Petitioner provided timely, concrete, and meaningful answers;⁵
- Pursuant thereto, and as Davis concedes, within two months of serving its written response, on July 23, 2013 Petitioner timely produced **over seven thousand pages** of written documents. See, Davis response, Exhibit C. As the Board is aware, documents need not be produced on the date written response to discovery are served.⁶

⁵ As indicated below, any deficiencies Davis alleged to Petitioner's written responses and discovery production were resolved over six months ago. See, Exhibit A attached hereto. Moreover, any "alleged deficiencies" are not ripe for consideration pursuant to Rule 2.120 they are not the subject of this motion.

⁶ As the Board is aware, production documents are not due on the date written requests to production requests are served. On the other hand, where, as here, the Board has ordered that documents be produced by a date certain, documents must be produced by that date.

- Since July 23, 2013, Davis has not once voiced any objections to Petitioner's responses, nor (outside of this response to Petitioner's Motion) ever alleged any failure on the part of Petitioner.
- In fact, Davis' sole objections to Petitioner's discovery responses were resolved on June 14, 2013. Davis wrote to Petitioner on June 11, 2013. On June 14, 2013, Legend responded, refuted and resolved these objections. See, Exhibit A attached hereto.

Rather than delay, plaintiff's record of serving and answering discovery, including the production of **seven thousand pages** of documents within two months of the date written response were due, shows diligence and cooperation in discovery while enduring Davis' continuing defiance of Board orders and obstruction of discovery.

CONCLUSION

Wherefore, as Petitioner has shown good cause for a unilateral extension of the discovery period, Petitioner respectfully requests that such motion be granted running from the date of the Board's ruling on this motion or its ruling on the motion for sanctions, whichever occurs earlier.

Respectfully submitted,

Legend Pictures, LLC

Date April 4, 2014

By__ /Carla C. Calcagno/____
 Carla C. Calcagno, Esq.
 Janet G. Ricciuti, Esq.
 Calcagno Law PLLC
 1250 24th Street, N.W.
 Suite 300
 Washington, DC 20037
 Telephone: (202) 466-0544
 Attorneys for Legend Pictures, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 4, 2014 a true and accurate copy of the foregoing:

**PETITIONER'S REPLY IN FURTHER SUPPORT OF MOTION FOR UNILATERAL
EXTENSION AND EXHIBIT A**

was served by agreement of the parties on Defendant by emailing a copy of the same to
nevisbaby@hotmail.com and tharilest@yahoo.com.

Date: April 4, 2014

/Carla Calcagno/

EXHIBIT A

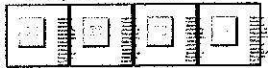
Carla Calcagno

From: Gloria W. <nevisbaby@hotmail.com>
Sent: Tuesday, June 11, 2013 11:41 PM
To: Carla Calcagno; Q D
Cc: cccalcagno@gmail.com; janet.ricciuti@calcagnolaw.com; admin@calcagnolaw.com; ricciutij@comcast.net
Subject: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY
Attachments: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY.pdf

Ms. Calcagno, Ms. Ricciuti,

Please see the attached documents.

Gloria Walters
Administrative Assistant to the Registrant
P.O.Box 47893
Tampa, Florida 33646



REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY

Ms. Calcagno,

This correspondence is from Quentin Davis, Registrant in proceeding 92056168 and owner of Registration #4106459 for the mark "Legendary". I am writing this correspondence to inform you that I have received the 5/28/2013 responses to my discovery requests and I do find them highly insufficient. The following are reasons supporting the inadequacy of the responses served.

In subsection 9 of Petition to Cancel (proceeding 92056168), Petitioner alleges that...

"In fact, media reports have commonly referred to Petitioner using the shortened mark LEGENDARY."

Also, the "DOCUMENTS" section of INITIAL DISCLOSURES OF PETITIONER LEGEND PICTURES, LLC states that...

"II. DOCUMENTS

Legend Pictures agrees to produce and/or make available for inspection, to the extent they exist, certain non-privileged documents and things in its possession, custody, or control that are relevant to the claims or defenses in this action, including but not necessarily limited to the following categories:

*1. Documents demonstrating a likelihood of confusion between Petitioner's mark LEGENDARY PICTURES and Registrant's mark **LEGENDARY**.*

*2. Advertising, marketing, promotion, and sales of products and services bearing the marks **LEGENDARY**, LEGENDARY PICTURES, and LEGENDARY ENTERTAINMENT.*

*3. Petitioner's use of the marks **LEGENDARY**, LEGENDARY PICTURES, and LEGENDARY ENTERTAINMENT.*

*4. Documents demonstrating third parties' use of the shortened mark **LEGENDARY** to refer to Petitioner."*

You have been asked to comply with requests which are in alignment with the claims and offers made on behalf of Legend Pictures LLC.

Your replies alleging that interrogatories containing the phrase ... only "Legendary"... are too vague for accurate response are coy and unacceptable. You clearly understand that the phrase ...only "Legendary"... is meant as a concise indicator for instances involving the only the "shortened mark 'LEGENDARY'" and is meant to exclude confusion with any other

combinations of words including the mark Legendary (i.e. "LEGENDARY PICTURES", "LEGENDARY ENTERTAINMENT" etc.).

The Response given to Interrogatory No. 10 claims that Petitioner will produce documents sufficient to explain the reasons for Petitioner's voluntary amendments yet no documents whatsoever were produced.

Through this correspondence, I am requesting service of thorough, accurate, and truthful responses to the discovery requests I served. I am willing to wait three days (until midnight 6/14/2013) for you to fulfill your duty to respond accurately, thoroughly, and truthfully to the discovery requests. If you need more time to comply, please contact me immediately so that we may come to an amicable agreement.

Please consider this my good faith effort to resolve this dispute.

Nothing contained in this letter is intended, nor shall anything be construed to constitute an express or implied waiver of any rights or remedies to which I the Registrant (Quentin Davis) may be entitled at law or in equity. The foregoing is not intended to be a complete recitation of the facts upon which this matter is based.

With the Utmost Regard,

/Quentin Davis/
Quentin Davis – Registrant
P.O. Box 47893
Tampa Fl. 33646

6/11/2013

Date

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2013, a true and complete copy of the foregoing **REGISTRANT'S OBJECTION TO PETITIONER'S MOTION TO COMPEL INTERROGATORIES AND REQUESTS FOR PRODUCTION & BRIEF IN SUPPORT OF REGISTRANT'S OBJECTION TO PETITIONER'S MOTION TO COMPEL INTERROGATORIES AND REQUESTS FOR PRODUCTION** was served to Petitioner via electronic mail to:

Carla Calcagno and Janet Ricciuti at e-mail addresses:

carla.calcagno@calcagnolaw.com

and

cccalcagno@gmail.com

and

ricciutij@comcast.net

and

janet.ricciuti@calcagnolaw.com

and

admin@calcagnolaw.com

Calcagno Law
2300 M Street, N.W., Suite 800
Washington, D.C. 20037

/Gloria Walters/

Gloria Walters

Administrative Assistant to the Registrant

P.O. Box 47893

Tampa, Florida 33646

Carla Calcagno

From: Carla Calcagno <carla.calcagno@calcagnolaw.com>
Sent: Friday, June 14, 2013 3:14 PM
To: nevisbaby@hotmail.com; tharilest@yahoo.com
Cc: 'cccacagno@gmail.com'; 'janet.ricciuti@calcagnolaw.com'; 'admin@calcagnolaw.com'; 'ricciutij@comcast.net'
Subject: RE: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY

Dear Mr. Davis,

We write in response to your June 11, 2013 email, which was sent to us at 11:41 pm. Legend timely served its truthful, and succinct written responses to your discovery requests on May 28, 2013.

As you have stipulated that the phrase "only LEGENDARY" is meant to "exclude other combinations of words including the mark Legendary (i.e. "LEGENDARY PICTURES", "LEGENDARY ENTERTAINMENT" etc.)," we withdraw the objection to vagueness as to that phrase. We believe that the answers to the interrogatories and document requests remain the same. We reserve our right as always to revise these answers should subsequent investigation determine that they may be amended.

You also complain that Legend has not yet produced documents in Response to Interrogatory No. 10. Please note that Legend Pictures LLC is assembling its documents for production and we will send them to you just as soon as possible consistent with Legends' obligations under the Federal Rules of Civil and Procedure and the Trademark Rules of Practice.

We trust this resolves this matter.

In the meantime, we note that while Legend has succinctly, truthfully, and honestly answered each of your discovery requests, with minimal objections, you have still failed to answer a single interrogatory or produce a single document, even though your responses were due well prior to Legend's. Please withdraw your objections so that the Board and we can obtain your responses to discovery.

Very truly yours,

Carla Calcagno
Calcagno Law
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037
Tel: 202 973 2880
Fax: 866 400 8464
carla.calcagno@calcagnolaw.com

From: Gloria W. [mailto:nevisbaby@hotmail.com]
Sent: Tuesday, June 11, 2013 11:41 PM
To: Carla Calcagno; Q D
Cc: cccacagno@gmail.com; janet.ricciuti@calcagnolaw.com; admin@calcagnolaw.com; ricciutij@comcast.net
Subject: REGISTRANT'S REQUEST FOR SUFFICIENT RESPONSE TO DISCOVERY

Ms. Calcagno, Ms. Ricciuti,

Please see the attached documents.

Gloria Walters

Administrative Assistant to the Registrant

P.O.Box 47893

Tampa, Florida 33646



Carla Calcagno

From: Gloria W. <nevisbaby@hotmail.com>
Sent: Wednesday, July 17, 2013 5:11 PM
To: Carla Calcagno
Cc: Q D; admin@calcagnolaw.com; janet.ricciuti@calcagnolaw.com
Subject: RE: Legend v. Davis

Ms. Calcagno,

Send all documents to the following address:

Quentin Davis
P.O. Box 47893
Tampa, Florida 33646

Regards,

Gloria Walters
Administrative Assistant to the Registrant
P.O.Box 47893
Tampa, Florida 33646

From: carla.calcagno@calcagnolaw.com
To: nevisbaby@hotmail.com
CC: harilest@yahoo.com; admin@calcagnolaw.com; janet.ricciuti@calcagnolaw.com
Subject: Legend v. Davis
Date: Wed, 17 Jul 2013 15:49:31 -0400

Dear Mr. Davis,

We are in the process of sending you Legend's documents in response to your discovery requests. Unfortunately, the documents are too large to send as a pdf attachment to email. Please provide a physical address where we may send the documents.

Thank you.

Regards,

Carla Calcagno

Calcagno Law

2300 M Street,N.W.

Suite 800

Washington, D.C. 20037

Tel: 202 973 2880

Fax: 866 400 8464

carla.calcagno@calcagno!aw.com